



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

Gerald C. Mann  
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ATTORNEY GENERAL

March 3, 1939

Hon. John H. Shook,  
Criminal District Attorney  
Bexar County,  
San Antonio, Texas

Dear Sir:

Opinion No. 0-398

Re: Members of Hospital Board of  
Bexar County organized under  
Article 4437a are not de  
facto officers. Contracts  
of employment made by such  
Board are not binding on the  
county.

Your letter of February 24, 1939, submits the following questions:

"Would the fact that a board appointed under the provisions of Article 4437a, D.C.S., which was subsequently declared to be holding office illegally by the commissioners' court but which had actually entered upon the discharge of its duties, be a de facto board which could bind Bexar County on contracts of employment, and thus render the county liable for services?"

"Would the employees of the board hereinabove mentioned who had entered upon the discharge of the duties imposed upon them by the board, and who are still ready, able and willing to discharge the services required of them until the termination of their alleged contracts, to-wit: August 1, 1939, have a valid claim against Bexar County under the decision of *Bluder vs. City of San Antonio*, 2 N. W. (2), 841?"

In *state vs. Gillette's Estate et al*, 10 N. W. (2d) 984, the court says:

"It is also urged that the court in question should be treated as a de facto court, and that, even though the statute creating the 'County Court at Law of Eastland County, Texas,' be unconstitutional, that the judge thereof, for the sake of public policy, and the protection of private rights, should be recognized as an officer de facto until the unconstitutionality of the act has been judicially determined. In other words, it is urged that a de facto officer may

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exist, though there be no de jure office. We cannot uphold this contention. There can be no officer, either de jure or de facto, unless there be an office to fill. If the act in question is unconstitutional, then it never became a law, and all attempts of all persons purporting to act as judge of said 'County Court at Law' were without authority of law and utterly void. Norton vs. Shelby County, 118 U. S. 454, 6 S. Ct. 1121, 30 L. Ed. 178."

Therefore, we are of the opinion that the Bexar County Hospital Board, organized under Article 4437a, is not a de facto board, and that its executory contracts are not binding on Bexar County.

The rule laid down in the Glider case does not apply to the executory part of the contract. It probably does apply to compensation for any services actually rendered, but cannot apply to any unperformed portion of the alleged contract.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ A. C. Rollins  
Assistant

ASR-LR:jrb

APPROVED:  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS